UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MATTIE HALLEY, ET AL.

On Bchalf of Thcmsclvcs and All Others Similarly Situated,

Plaintiffs,

v.

HONEYWELL INTERNATIONAL, INC., ET AL.,

Defendants.

Civil Action No. 2:10-cv-3345 (ES) (JAD)

CLASS COUNSEL'S MOTION SEEKING AN AWARD OF REASONABLE COSTS

Document Electronically Filed

TO: William T. Walsh, Clerk
United States District Court
District of New Jersey
Martin Luther King Building
& U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

PLEASE TAKE NOTICE that on October 16, 2017, Class Counsel for Plaintiffs Mattie Halley, Leticia Malave, Shem Onditi, and the Temporary Administrator of the Estate of Sergio de la Cruz, on behalf of themselves and all others similarly situated, shall move for the entry of an Order granting Class Counsel's Motion Seeking an Award of Reasonable Costs and approving distributions from the Settlement Fund as provided in the Order and Final Judgment Approving Class Action Settlement (ECF No. 442).

PLEASE TAKE FURTHER NOTICE that Class Counsel shall rely on the accompanying Memorandum of Law in Support of Class Counsel's Motion Seeking an Award of Reasonable Costs, the Declaration of Howard A. Janet and the exhibits attached to that Declaration (ECF Nos. 456 and 457), and the Stipulation of Maureen Chandra (ECF No. 458), submitted in support of this Motion, and all other papers of record.

PLEASE TAKE FURTHER NOTICE that this Motion and accompanying Memorandum of Law were previously filed on September 13, 2017. They are being resubmitted pursuant to a quality control message from the Clerk of the Court, filed on September 14, 2017. Plaintiffs respectfully request that the Court consider the Declaration of Howard A. Janet (ECF No. 456), Exhibit 1 to that Declaration, filed under seal (ECF No. 457), the Stipulation of Maureen Chandra

(ECF No. 458); and the Letter of Michael R. McDonald (ECF No. 459) in connection with this re-filed Motion and Memorandum of Law.

For the reasons set forth in the accompanying Memorandum of Law in Support of Class Counsel's Motion Seeking an Award of Reasonable Costs, Class Counsel hereby move the Court to:

1. Enter an Order granting Class Counsel's Motion Seeking an Award of Reasonable Costs, approving an award of $1,140,023.77 in costs (the same amount as previously sought by Class Counsel and approved by this Court), and approving distributions from the Settlement Fund as provided in the Order and Final Judgment Approving Class Action Settlement (ECF No. 442); and

2. Grant such other relief and orders as the Court deems necessary and appropriate.

PLEASE TAKE FURTHER NOTICE that a proposed Order is submitted herewith.

Respectfully submitted,

Dated: September 15, 2017

By: s/ Allan Kanner

KANNER AND WHITELEY, LLC
Allan Kanner, Esq.
Elizabeth B. Petersen, Esq. *(pro hac vice)*
701 Camp Street
New Orleans, LA 70130
Telephone: (504) 524-5777
Facsimile: (504) 524-5763
A.Kanner@kanner-law.com
E.Petersen@kanner-law.com

JANET, JENNER & SUGGS, LLC
Howard A. Janet, Esq. (*pro hac vice*)
1777 Reisterstown Road, Suite 165
Commerce Centre East
Baltimore, MD 21208
Telephone: (410) 653-3200
Facsimile: (410) 653-9030
hjanet@jjsjustice.com

GERMAN RUBENSTEIN LLP
Steven J. German, Esq.
Joel M. Rubenstein, Esq.
19 West 44th Street, Suite 1500
New York, NY 10036
Telephone: (212) 704-2020

Facsimile: (212) 704-2077
sgerman@germanrubenstein.com
jrubenstein@germanrubenstein.com

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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HONEYWELL INTERNATIONAL, INC., ET AL.,

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MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION SEEKING AN AWARD OF REASONABLE COSTS

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TABLE OF AUTHORITIES

On behalf of Plaintiffs Mattie Halley, et al., and pursuant to Federal Rules of Civil Procedure 23(h) and 54(d)(2), Class Counsel respectfully submit this Motion Seeking an Award of Reasonable Costs incurred in the prosecution of this class action against Defendant Honeywell International, Inc., in the previously requested amount of $1,140,023.77. (*See* ECF Nos. 415-1 at 7, 431 at 1.) In support of this motion, Class Counsel state as follows:

I. INTRODUCTION

On July 21, 2017, the United States Court of Appeals for the Third Circuit affirmed the Order of this Court, dated April 26, 2016, to approve the settlement between Plaintiffs and Honeywell as fair and adequate, and approve the award of attorney's fees. (ECF No. 451-1 at 42.) It remanded this action so that this Court may articulate why Class Counsel's costs were reasonably incurred in the prosecution of the case against Honeywell and address the issue of commingled expenses. (*Id.* at 41–42.) The Third Circuit gave the following explanation for this limited remand:

> [I]f an award of costs is approved after *in camera* review of attorney time or expense records, the District Court should provide sufficient reasoning so there is a basis to review for abuse of discretion. *See Gunter* [*v. Ridgewood Energy Corp.*, 223 F.3d 190 (3d Cir. 2006)] at 196. The Court addressed Chandra's contentions regarding the expense award only in conclusory statements, and provided no reasoning explaining its decision to accept class counsel's contention that commingled expenses could not be separated or allocated proportionally between the two classes.

(ECF No. 451-1 at 41.)

On July 31, 2017, this Court entered an Order that contemplated appointing a Master, the Honorable Garrett E. Brown, Jr., to assist the Court in accomplishing the tasks presented by the remand from the Third Circuit. (ECF No. 452.) The Order provided 14 days to receive objections to this appointment. (*Id.*) Plaintiffs and Objector Maureen Chandra ("Ms. Chandra"), the sole

remaining objector[1] to the settlement between Plaintiffs and Honeywell, filed a Joint Motion to Amend Order Regarding Appointment of Special Master. (ECF No. 453.) In that motion, the movants informed this Court that they expected to submit filings within 30 days that "may obviate the need to appoint a special master and avoid burdening members of the Honeywell classes with additional expenses and delays in distributing their Court-awarded compensation." (ECF No. 453 at 2.) On August 14, 2017, this Court granted that motion and extended the time to object to the appointment of a Master until September 13, 2017. (ECF No. 454.)

The present Motion and related supporting documentation comprise the submissions previously promised by Plaintiffs and Objector in their Joint Motion to Amend Order Regarding Appointment of Special Master. The present Motion seeks to assist the Court in fulfilling the mandate of the Third Circuit, by providing an analysis and suggested factual findings that elaborate the record supporting this Court's previous award of costs to Class Counsel.

II. PROCEDURAL BACKGROUND

This class action arises from allegations of chromium ore processing residue (COPR) contamination of thousands of properties in Jersey City, New Jersey by Defendants Honeywell International, Inc. and PPG Industries, Inc. As described in greater detail below, Plaintiffs, who were residential property owners in Jersey City, brought claims of private nuisance, strict liability, trespass, battery, negligence, and civil conspiracy against Defendants regarding their historic chrome production and COPR disposal activities in Jersey City. (*See generally* ECF No. 1-1 at ¶¶ 26–168.)

Suit was first filed on May 17, 2010 against both Honeywell and PPG. (The course of the litigation is described in greater detail in Section III, *infra*.) On November 7, 2014, Plaintiffs and Honeywell executed an agreement to settle all claims against Honeywell in consideration of a

[1] As discussed *infra,* at 7, Ms. Chandra was one of only four property owner objectors (who collectively owned three out of 3,497 class properties). (ECF No. 439 at 5–6.) She also was the only Class Member who filed a written objection with this Court regarding attorney fees and costs, and was the sole objector on appeal. (ECF Nos. 398, 406, 410, 439 at 6.)

monetary settlement of $10,017,000 and moved for preliminary approval of this settlement. (ECF Nos. 367, 367-2 at 30–35.) This Court filed orders on May 1, 2015 that approved the creation of a qualified settlement fund and granted preliminary approval to the class settlement. (ECF Nos. 389, 390.) Class Counsel then submitted a Motion Seeking an Award of Reasonable Costs, Attorneys' Fees, and Incentive Awards on June 1, 2015. (ECF No. 397.) Class Counsel sought $1,191,174.67 in litigation costs (later amended to $1,140,023.77 (*see* ECF No. 431)), $2,504,250 in attorneys' fees, and $10,000 for the two named representatives of the Honeywell Classes. (ECF No. 397 at 2.)

Objector Maureen Chandra filed objections to the preliminary settlement and Class Counsel's motion for costs and fees on July 31, 2015. (ECF Nos. 406, 407.) Among other objections, she contended that attorney's fees and expenses incurred in pursuing litigation against PPG should not be deducted from the common fund reserved for the Honeywell Classes. (ECF No. 407 at 6–7.) In total, the Court received objections from four objectors (ECF Nos. 398, 406, 407 410), who collectively owned three out of 3,497 class properties (ECF No. 439 at 6). Ms. Chandra was the sole objector to contest the attorney's fees and costs sought by Class Counsel. (*See* ECF Nos. 398, 407, 410.)

Regarding the issue of allocating costs between the three classes—Classes A and C (the "Honeywell Classes") and Class B (the "PPG Class")—Class Counsel stated:

> [T]his case involved numerous allegations of joint and several liability, including Civil Conspiracy. As such, up until the time when the settling parties notified the Court of their settlement in principle, the case was litigated in a manner such that all costs were advanced by the Class firms in their effort to prosecute the claims against Honeywell and PPG jointly. For instance, costs associated with attendance at court conferences, expert work and legal research were indistinguishable as between Honeywell and PPG. Costs associated with discovery and depositions of defendants and non-parties were similarly advanced on an indistinguishable basis and the information acquired informed our case strategy against both defendants jointly. Defendants' discovery was advanced in similar fashion, with examination of non-parties and the Class Representatives focused on common issues such as statute of limitations.

> Once a settlement in principle was reached, however, the majority of case expenses, such as expert expenses, were incurred in pursuing plaintiffs' claims against PPG. As such, Class Counsel have isolated these expenses and do not seek reimbursement of those costs from the Honeywell common fund.

(ECF No. 397-1 at 24–25.) Class Counsel added that they "have likewise isolated certain Honeywell-only expenses, such as the costs associated with the mediation and settlement, which would not be reimbursed from PPG." (*Id.* at 25 n.6.) Class Counsel Steven German submitted a declaration to support these claims. (ECF No. 397-2 at 18–19.)

Upon later request from the Court, Class Counsel submitted detailed *in camera* documentation of these expenses (*see* ECF No. 431), which is being resubmitted under seal in support of this Motion (*see* Janet Decl., Ex. 1). Of the $1,140,023.77 sought, $1,085,869.58 were allocated to both classes jointly for expenses that benefited all classes, and $54,154.19 were allocated to the Honeywell Classes only. (*Id.* at 1.) $245,237.26 were allocated to the PPG Class only and not charged to the Honeywell Classes. (*Id.*) Additional details about these expenses, their allocation, and the timeframes during which they were incurred are described in greater detail *infra* at pp. 20–24.

The Court conducted a fairness hearing on September 24, 2015. After supplemental briefing and submission of *in camera* documentation of expenses on October 8, 2015 (ECF Nos. 431–436), the Court issued its Order and Opinion approving the final settlement on April 26, 2016 (ECF Nos. 439–440). With regard to costs, the Court stated the following in its Opinion:

> Settlement Class Counsel reiterates that, although settlement has been reached only with Honeywell, they litigated this case "in a manner such that all costs were advanced by the Class firms in their effort to prosecute the claims against Honeywell and PPG jointly" as "this case involved numerous allegations of joint and several liability." But "[o]nce a settlement in principle was reached . . . the majority of case expenses, such as expert expenses, were incurred in pursuing plaintiffs' claims against PPG and were distinguishable," and Settlement Class Counsel "have isolated these expenses and do not seek reimbursement of those costs from the Honeywell

> settlement fund." Settlement Class Counsel has also "isolated certain Honeywell-only expenses, such as the costs associated with the mediation and settlement."
>
> The Court finds that Settlement Class Counsel is entitled to receive costs in the requested amount because the requested costs have been "adequately documented and reasonably and appropriately incurred in the prosecution of the case." Importantly, Settlement Class Counsel has provided this Court with itemized expenditures, including *in camera* submissions showing detailed records of the requested costs.

(ECF No. 439 at 54–55) (citations omitted.)

The Court then stated, "To be sure, for the reasons discussed above under the second *Gunter* factor, the Court is not persuaded otherwise by Ms. Chandra's objections." (*Id.* at 55.) Here, the Court referenced a portion of its analysis earlier in the Opinion regarding the reasonableness of charging the Honeywell Classes with attorneys' fees for hours expended on the case as a whole:

> [T]he Court is unpersuaded that Settlement Class Counsel wants Classes A and C to pay for litigation pursued against PPG for Class B. Although settlement has been reached with Honeywell, Settlement Class Counsel was prosecuting this action against Honeywell and PPG jointly until it notified this Court that there was a settlement with Honeywell. Settlement Class Counsel's theory and the realities of this case—for example, that the Defendants' waste was allegedly commingled, that there are allegations of joint and several liability, that there is a conspiracy claim, that court conferences didn't distinguish between Honeywell and PPG—does not reflect some nefarious intent to have Classes A and C subsidize Settlement Class Counsel's litigation against PPG. . . .
>
> Mindful of the Court's duty to function as a fiduciary for each Class affected by the Settlement, the Court is persuaded that the Classes' interests were served given Settlement Class Counsel's declaration that this "case was litigated in a manner such that all costs were advanced by the Class firms in their effort to prosecute the claims against Honeywell and PPG jointly." Settlement Class Counsel's inability to parse out costs attributable to each Defendant for activities such as attending court conferences and reviewing discovery *supports* that Settlement Class Counsel prosecuted this action against Defendants jointly.

(ECF No. 439 at 46–47) (citations omitted). The Court then issued its Order and Final Judgment Approving Class-Action Settlement on May 10, 2016, finding, with regard to costs, that

"[r]eimbursement for Settlement Class Counsel's Expenses in the following amount $1,140,023.77 are reasonable and are approved." (ECF No. 442 at 7.)

Thereafter, Objector noted a timely appeal. (ECF No. 444.) Objector argued that the Court had abused its discretion in approving the class settlement, because, Objector alleged, the Court (1) lacked adequate information about the extent of property contamination of Class A and C members' homes, (2) improperly relied on Honeywell's allegation that class members could still obtain remediation from the New Jersey Department of Environmental Protection, (3) approved the settlement despite the possibility that a class member's home may have to be demolished to remediate his or her property, (4) approved an overly broad release, (5) failed to adequately consider what Objector described as the negative reaction of the class during a meeting with Class Counsel to discuss the settlement, and (6) improperly evaluated the *Girsh* factors. (Appellant's Br., Case No. 16-2712, Doc. No. 003112387414, at 17–36.) Objector also alleged on appeal that the Court abused its discretion in approving Class Counsel's requested fees and expenses, because the Court had not applied New Jersey Court Rule 1:21-7, not allowed class member review of the basis for Class Counsel's fee request before expiration of the deadline to object, and had permitted recovery of expenses incurred during pursuit of litigation against PPG. (*Id.* at 36–50.) Objector did not appeal this Court's finding that attorneys' fees for all work done to date in the litigation could appropriately be charged to the Honeywell Classes' common fund.

After oral argument on January 27, 2017, in which Objector's counsel, Thomas Paciorkowski participated (see Janet Decl., Ex. 4), the Third Circuit remanded the case to this Court on July 21, 2017 "so the District Court may articulate why the costs were reasonably incurred in the prosecution of the case against Honeywell and to address the issue of commingled expenses, including, if appropriate, by requiring additional information from counsel or the parties." (ECF No. 451-1 at 41.) In so holding, however, the Court of Appeals "express[ed] no opinion as to whether the costs

should ultimately be approved and in what amount." (*Id.* at 42.) The Third Circuit affirmed this Court's order approving the settlement in all other respects, including its award of the full requested amount of attorneys' fees. (*Id.*) It did not indicate any disagreement with this Court's assessment that Class Counsel appropriately charged the Honeywell Classes for attorneys' fees for hours spent litigating the case as a whole.

Class Counsel maintain that the Court has ample information to award Class Counsel's claimed expenses and reach the conclusion that the so-called commingled expenses were incurred for the benefit of all classes. Objector Maureen Chandra has reviewed the instant Motion and the attached proposed order, and stipulates that she does not plan to litigate her prior objections further and will not file an objection if the Court grants the instant Motion. (*See* Chandra Stipulation ¶¶ 1–4, dated Sept. 12, 2017.) Defendant Honeywell has stated that it takes no position regarding the issue of Class Counsel's costs, and is expected to submit a filing expressing that stance.

To assist the Court as it fulfills the mandate of the Third Circuit, Class Counsel submit the following facts and analysis that indicate the Court's previous award of costs to Class Counsel was appropriate.

III. FACTS JUSTIFYING AN AWARD OF CLASS COUNSEL'S REASONABLE COSTS

A. The Complaint

1. Plaintiffs filed this action on May 17, 2010 in New Jersey Superior Court. It was removed to this Court on June 29, 2010. (ECF No. 1.) The suit was brought on behalf of a medical monitoring class (defined as "all persons who, on or before May 17, 2010, for six consecutive months or greater, ever resided, worked and/or attended school on any parcel of land any part of which is located within 500 feet of any COPR [chromium ore processing residue] site located in Jersey City, New Jersey") and a property damages class (defined as "[a]ll persons who, on or after

May 17, 2010, own any parcel of land any part of which is located within one quarter mile from any COPR [chromium ore processing residue] site located in Jersey City, New Jersey," excluding the Hudson Waterfront Neighborhood). (ECF No. 1-1 at ¶ 66.)

2. In the original Complaint, both the putative medical monitoring and the putative property damages classes asserted that Honeywell and PPG were jointly and severally liable for both diminution in property value and medical monitoring compensation, because their chromium production and waste disposal activities exposed members of both the medical monitoring and the property damages class to hexavalent chromium, a known human carcinogen. (*E.g., id.* at ¶ 99.) Counts for private nuisance, strict liability, battery, trespass, negligence, civil conspiracy, and unjust enrichment were pursued against both Defendants on the basis of joint and several liability. (*See generally* ECF No. 1-1.)

3. These claims were based, in part, on a 2008 study by the federal Agency for Toxic Substances Disease Registry ("ATSDR"), cited in the Complaint (ECF No. 1-1 at ¶ 31), which indicated an increased relative risk of lung cancer of up to 17 percent in census blocks within 300 feet of a historic chromium disposal site (ECF No. 415-8 at 8, 10), compared with the incidence of lung cancer in an unexposed group (*id.* at 13). As this study noted, the New Jersey Department of Environmental Protection ("NJDEP") had identified 136 COPR disposal sites across Jersey City. (*Id.* at 6.) Nearly 3 million tons of COPR were produced in Hudson County; most COPR disposal sites were in Jersey City. (*Id.*)

4. The Complaint also cited a November 2008 study by investigators at the Robert Wood Johnson Medical School and Environmental and Occupational Health Sciences Institute, who examined the presence of hexavalent chromium in dust found in 100 homes across neighborhoods in Jersey City. (ECF No. 1-1 at ¶ 33.) All homes were found to contain hexavalent chromium. (*Id.*; ECF No. 415-9 at 10.) Moreover, a 2008 study prepared by the NJDEP, "Characterization of

Chromium Exposure Potential for US Census Block Groups," found that most COPR particulate matter could be expected to be dispersed through the air approximately 300 feet beyond a COPR site, and also that this distance should not be taken as a limit on contamination from airborne particulates. (ECF 415-8 at 41–42.) Thus, Plaintiffs plausibly alleged that airborne releases of waste materials from production and disposal of COPR caused toxic hexavalent chromium to disperse through the air and contaminate nearby properties belonging to the putative medical monitoring and property damages classes. (ECF No. 1-1 at ¶ 5.)

5. At the time Plaintiffs filed suit, neither of the aforementioned studies, nor any other information available to Plaintiffs at the time, identified which disposal sites each Defendant had used, or the extent of airborne dispersal of each Defendants' COPR waste or production releases, such that the contamination attributable to each Defendant could be apportioned. Under New Jersey law, the prevailing party in an environmental tort action "may recover the full amount of the compensatory damage award from any party determined to be liable, except in cases where the extent of negligence or fault can be apportioned." N.J. Stat. Ann. § 2A:15-5.3(d) (West 2017). Thus, Plaintiffs plausibly alleged in each count of the Complaint that Defendants were jointly and severally liable for contaminating the areas set forth in the definition of the putative classes.

6. The Complaint also alleged that Honeywell, PPG, and their predecessors in interest had carried on a conspiracy to improperly dispose of COPR and to conceal the risks their disposal activities posed to the public. (ECF No. 1-1 at ¶¶ 150–60.) In New Jersey, "[c]ivil conspirators are jointly liable for the underlying wrong and resulting damages." *Banco Popular N. Am. v. Gandi*, 876 A.2d 253, 263 (N.J. 2005). Detailed factual allegations, which indicated Defendants' longstanding awareness of and efforts to conceal the risks posed by improper disposal of COPR, supported the cause of action for conspiracy. (*Id.* at ¶¶ 41–51.) As Judge Dennis M. Cavanaugh found in a

predecessor suit against Honeywell (in which Class Co-Counsel Steven German was co-counsel for the plaintiffs):

> There is no question but that Honeywell (Allied) has known of the chromium contamination at the Site since 1982, and although they have been directed by NJDEP on numerous occasions to take steps necessary to provide a permanent remedy for the property, Honeywell has failed to do so. The trial record is replete with instances of Honeywell's avoidance tactics. Rather than respond and solve the problems, Honeywell continually took the path of further testing, further debate and negotiation.
>
> * * *
>
> Mutual disposed its COPR at the Site with full knowledge of the serious adverse health effects caused by hexavalent chromium, including lung cancer. . . . The Court rejects Honeywell's argument that Mutual's knowledge about occupational health hazards associated with chromium did not equate to knowledge that its COPR could present health or environmental risks to the public.

Interfaith Cmty. Org. v. Honeywell Int'l, Inc., 263 F. Supp. 2d 796, 826, 853–54 (D.N.J. 2003), *aff'd,* 399 F.3d 248 (3d Cir. 2005). The available record thus supported pleading a conspiracy count against Honeywell and its predecessors in interest.

7. The available record also supported pleading a conspiracy count against PPG and its predecessors in interest. Like Honeywell, PPG had knowledge of serious negative health effects associated with exposure to chromium waste. (*See* ECF Nos. 24 at 13–15; 26-9 at 2–5; 26-10; 27-1 at 5.) Yet PPG, in collaboration with Honeywell and its predecessors in interest, sought to minimize to the NJDEP and the public the negative health impacts associated with chromium exposure, and tried to modify cleanup standards to the detriment of the class members. (*See* ECF No. 24 at 13–15 and exhibits cited therein.)

8. Defendants' conspiracy prevented the class members from learning about the dangerous contamination of their properties, which prolonged the exposure of class members to

COPR, and delayed remediation of and compensation for COPR contamination of the class properties. (ECF No. 24 at 5–6, 17–21.)

9. After filing suit, Plaintiffs sought stipulations from Defendants to identify the sites where each Defendant had disposed of COPR. (*See* Janet Decl., Ex. 2 at 17:4–12.) This information was relevant to proximate cause and the elements of commonality and predominance required to maintain a class action. *See* Fed. R. Civ. P. 23(a)(2); Fed. R. Civ. P. 23(b)(3); *Gates v. Rohm and Haas Co.*, 655 F.3d 255 (3d Cir. 2011).[2]

10. In response, Defendants indicated they were not able to determine the historical ownership of many chromium dump sites, who had access to them, or both. (Janet Decl., Ex. 2 at 54:14–58:20.) Similarly, in response to an interrogatory requesting that PPG describe locations where COPR it produced exists or has existed, and means by which it arrived there, PPG did not identify any such sites in a narrative response, and claimed "that it does not have such information as to many Sites." (Doc. 140-2 at 1–3.)

11. Magistrate Judge Madeline Cox Arleo ordered discovery for class certification purposes on the approximately 200 sites included in Plaintiffs' initial class definitions. (*See* Janet Decl., Ex. 2 at 48:23–49:12.) Plaintiffs then sought formal written discovery from Defendants and the Site Administrator for the PPG chromium disposal sites to delineate the sites where each Defendant had produced or disposed COPR. In response, Defendants indicated that they were unable to provide this information, as they were unable to determine either the historical ownership of some chromium dump sites, who was responsible for the waste on those sites, or both. They then objected or simply identified hundreds of pages of Bates numbers that they claimed were relevant to

[2] Defendants admitted the relevance of this information to class certification. (*See* ECF No. 63 at 7 ("Defendants propose that matters related to certification of the proposed Plaintiffs' class . . . are limited to documents and information . . . related to: (i) the generation, transportation, placement, or migration of COPR or hexavalent chromium at or from each site in the lawsuit; (ii) any environmental investigations, remedial investigations, or remedial actions undertaken at, on, or in the vicinity of any site; (iii) the past or present use, operation, or ownership of each site."))

Plaintiffs' request, without a narrative that provided all of the requested information. (*See, e.g.*, ECF No. 152-3 at 13–14.)

B. The Amended Complaint

12. With Defendants' consent, Plaintiffs amended their complaint for the first time by filing a document entitled "Amended Class Action Complaint and Jury Demand" on June 20, 2012. (ECF No. 124.) The Amended Complaint withdrew the medical monitoring claim, eliminated a class representative, and advanced claims against both Defendants on behalf of a single, property damage class, defined as "[a]ll persons who, as of May 17, 2010 . . . owned any real property, any part of which is located within one-quarter mile of any COPR Site in Jersey City," excluding industrial and Hudson Waterfront neighborhood properties. (*Id.* at 12.) The Amended Complaint narrowed the scope of the lawsuit to 77 COPR sites. (ECF No. 221-1 at 9.)

13. Plaintiffs remained unable to obtain answers to interrogatories that specifically identified sites where the COPR waste Defendants had produced was known or suspected to exist. (*See, e.g.*, ECF No. 152-3 at 13–14.) Thus, on October 26, 2012, Plaintiffs filed a motion to compel disclosure of that information. (ECF No. 152.) This discovery dispute continued into the spring of 2013, despite Plaintiffs' diligent attempts to obtain relevant information from PPG and the Site Administrator. Eventually, voluminous additional document discovery was obtained from Defendants: between June 2012, when the Amended Complaint was filed, and June 2013, Plaintiffs received approximately 2.5 million additional pages of discovery from Defendants and 138,000 pages from the non-party Site Administrator. (ECF No. 258 at 12–13.)

C. The Fourth Amended Complaint

14. On the basis of this discovery and the work of Plaintiffs' experts, Plaintiffs moved to file a Fourth Amended Complaint[3] on June 28, 2013. (ECF No. 221.) For the first time, Plaintiffs proposed three geographically distinct classes: Classes A and C, which sought property-related damages from Honeywell, and Class B, which sought property-related damages from PPG. The Fourth Amended Complaint alleged that properties within Classes A and C were contaminated by Honeywell's former chrome production facility and 17 primary COPR disposal sites, and that properties within Class B were contaminated by PPG's former chrome production facility and nine disposal sites. (ECF No. 221-2 at 13.) The Fourth Amended Complaint narrowed the scope of the lawsuit from 77 COPR sites to 26 COPR sites. (*Id.*; ECF No. 221-1 at 9–10.) The Fourth Amended Complaint still included a conspiracy count which, if successful, would have imposed liability against PPG and Honeywell for each of the sites identified in the proposed amendment, whether the sites were within Classes A, B, or C. (*See* ECF Nos. 221-2 at 31–34; 259 at 31–34.)

15. Plaintiffs offered several reasons for this amendment. First, as Plaintiffs' counsel explained to Magistrate Joseph A. Dickson, the need to amend the then-operative complaint (i.e., the Amended Complaint) resulted in part from information, obtained via subpoena to the Site Administrator regarding contaminated sites for which PPG has assumed responsibility to remediate,[4] which indicated the areas of greatest community concern regarding COPR waste. (Janet Decl., Ex. 3 at 5:23–6:6.) PPG had sought to quash that subpoena, and these documents thus did not begin to be produced until the spring of 2013, a few months before the Fourth Amended Complaint was proposed. (*Id.* at 9:20–10:12.) As Plaintiffs' counsel stated:

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[3] No pleading entitled "Second Amended Complaint" or "Third Amended Complaint" was ever operative in this case.

[4] *See* ECF No. 259 at 37; Site Submittals, *Chromium Cleanup Partnership*, http://www.chromiumcleanup.com/site_submittals/site_submittals_JerseyCity_114.html (last visited Sept. 13, 2017).

> These are the areas where we have testimony that has recently been developed that people have expressed very serious concern about the presence of this waste in the community. They have expressed concern about the health of their neighbors, their property, their property values, their families. And we could set aside and hone in on the[se] areas of most concern in the city.

(*Id.* at 18:22–19:3.)

16. Moreover, Plaintiffs had not previously been able to learn through discovery whether waste from each Defendant had been commingled—i.e., that sites within Classes A and C may have contained contaminants dumped or dispersed from PPG dumping or operations, and sites within Class B may have been impacted by COPR disposal or dispersal by Honeywell. Class Counsel stated at the aforementioned hearing that "we tried to get each of these defendants to tell us where did you put your waste, and they stood in front of Judge Mannion and they stood in front of Judge Waldor and they said, we don't know, we—we think it's all mixed in, it's all commingled." (*Id.* at 44:2–6.) As Class Counsel continued, "they finally told us that they didn't have evidence that the waste was commingled." (*Id.* at 44:11–12.)

17. Thus, the Fourth Amended Complaint sought to narrow the lawsuit to "the areas where we're going to have the least fighting with the defendants about whose waste it is." (*Id.* at 18:1-4.) The class properties were adjacent to areas of historic chromium production by the corresponding defendant. (*Id.* at 18:5–10.) Moreover, based on the discovery that had recently been obtained from Defendants, Plaintiffs' experts expressed their belief that the class areas proposed in the Fourth Amended Complaint were those areas where they anticipated chromium dust would be found. (*Id.* at 42:5–10.)

18. The amendment also served the purpose of avoiding obstacles to establishing causation and class certification. As Plaintiffs' counsel explained,

> We recognized through that also that the case, as it was framed, was a little bit unwieldy—there were a lot of sites involved, and there was a lot of conflict arising over proving whose waste, when, where, where it went around the city—and by

> focusing the complaint the way it's focused now, we could jettison a lot of those issues to focus on the areas that we learned about through discovery, discovery that we had been seeking for two years and that wasn't produced.

(*Id.* at 6:7–14.)

19. Defendants opposed this amendment, arguing that the amendment was untimely and that Plaintiffs had identified no new information that led to the amendment. (*See* ECF Nos. 228, 229, 258 at 12.)

20. Magistrate Dickson disagreed with Defendants, finding that Plaintiffs "identify several new materials that they received since they filed their last complaint that informed their analysis," including "numerous aerial photos, Production Data Sheets, operational histories, information concerning the status of prior and/or ongoing remedies at the chromium Sites, information concerning breaches in Interim Remedial Measures, regulatory reports, and information concerning chromium testing and monitoring." (ECF No. 258 at 12–13.)

21. Magistrate Dickson also accepted Plaintiffs' argument that discovery production from the Site Administrator, which was not complete until May 2013, afforded another legitimate basis to amend. These recently provided materials included "[o]ngoing environmental releases of chromium from certain chromium sites, notes of meetings with NJDEP concerning a wide array of chromium remediation issues, notes of discussions with technical experts, results of residential inspections for the presence of chromium, and a substantial assortment of documents bearing on residents' fears and concerns." (ECF No. 258 at 13.)[5]

22. In short, Magistrate Dickson agreed with Plaintiffs that additional information uncovered from Defendants' and the Site Administrator's discovery responses produced after the filing of the Amended Complaint had allowed Plaintiffs to narrow the scope of the lawsuit to COPR

[5] Magistrate Dickson, however, denied Plaintiffs' motion to change the property ownership date relevant to class membership. (ECF No. 258 at 21.)

contamination of properties for which either PPG or Honeywell was liable. Plaintiffs filed their Fourth Amended Complaint on January 28, 2014 (ECF No. 259), one day after Magistrate Dickson issued his order permitting that complaint to be filed (ECF No. 258).

23. Of particular significance to the present Motion, the Fourth Amended Complaint continued to allege civil conspiracy against both Defendants. (ECF No. 259 at ¶¶ 147–57.) As discussed, this conspiracy allegation permitted Plaintiffs to hold PPG and Honeywell jointly and severally liable for contamination of all properties included in Classes A, B, and C, notwithstanding the revised descriptions of those putative classes. *See Banco Popular N. Am. v. Gandi*, 876 A.2d 253, 263 (N.J. 2005).

D. Settlement with Honeywell

24. After extensive mediation efforts, on July 14, 2014, [6] Plaintiffs and Honeywell reached an agreement to settle in principle the claims of Classes A and C. (*See* ECF No. 350.) The terms of the agreement were subject to Court approval and the execution of a settlement agreement mutually satisfactory to counsel. (*See* Janet Decl., Ex. 5 at ¶¶ 1, 5, 9.) The term sheet specified that, upon Court approval of a finalized settlement agreement, all allegations against Honeywell and all allegations of conspiracy against both Honeywell and PPG would be dismissed without prejudice. (*See id.* at ¶ 4.) Discovery regarding Class Areas A and C was stayed. (*See* ECF No. 352.)

25. Thus, the focus of the case shifted to PPG's conduct, such that the majority of expenses incurred by Class Counsel after this point were for the benefit of the PPG class and were allocated to PPG. (*See* Janet Decl., Ex. 1 at 6–9.) However, Honeywell continued to be a defendant

[6] A letter to the Court from Michael McDonald, counsel for Honeywell, indicates that the agreement in principle was executed on July 14, 2014. (*See* ECF No. 350 at 1.) The heading of the partially executed term copy of the term sheet Plaintiffs have on file has a date of July 15, 2014, but an undated signature. (*See* Janet Decl., Ex. 5 at 1.) For purposes of this Motion, Plaintiffs will use July 14, 2014 as the date of the agreement in principle to settle Plaintiffs' claims against Honeywell. The discrepancy between the two dates is not significant to the analysis presented herein.

in the case as to all claims, and continued to appear at depositions of witnesses, including the most recent deposition in the case, noted on August 25, 2014. (*See* Janet Decl., Ex. 6.)

26. Honeywell and Plaintiffs moved for approval of a qualified settlement fund on March 9, 2015. (ECF No. 381.) With Defendants' consent, Plaintiffs filed a Fifth Amended Complaint on March 17, 2015 (ECF No. 384 at 2), to conform the definitions of Classes A and C to the corresponding class definitions in the settlement agreement (ECF No. 382). This Complaint continued to allege civil conspiracy claims against both Defendants. (ECF No. 384 at ¶¶ 147–87.)

27. This Court filed orders approving the creation of a qualified settlement fund and preliminarily approving the class settlement on May 1, 2015. (ECF Nos. 389, 390.) On May 4, 2015, with Defendants' consent, Plaintiffs filed a Sixth Amended Complaint. (ECF No. 391.) This Complaint retained the claim of conspiracy against both defendants (*see id.* at ¶¶ 161–71), but removed allegations of joint and several liability as to the other counts. (However, the Settlement Agreement provided that, upon final approval of the Settlement Agreement, the conspiracy claims against PPG by the members of Classes A and C and the named plaintiffs of Class B would be dismissed without prejudice. (ECF No. 415-3 at 16–17.))

28. Class Counsel then filed their Motion Seeking an Award of Reasonable Costs, Attorneys' Fees and Incentive Awards on June 1, 2015. (ECF No. 397.) Honeywell and Plaintiffs filed their Joint Motion for Final Approval of Class-Action Settlement on September 3, 2015. (ECF No. 415.)

29. As discussed, the Court conducted a fairness hearing on September 24, 2015, issued its Order and Opinion approving the final settlement on April 26, 2016 (ECF Nos. 439, 440), and issued an order and final judgment approving the final settlement on May 10, 2016. (ECF No. 442.)

30. Previously, Class Counsel and the Court have identified the date of the settlement in principle (July 14, 2014) as the primary date of significance for analyzing the appropriateness of

Class Counsel's allocation of costs between the classes. (*See* ECF No. 439 at 54.) The Court may also find it useful to (1) consider Class Counsel's allocation—from the settlement in principle on July 14, 2014 to execution of the final settlement agreement on November 7, 2014, and then from November 7, 2014 to the final approval of the settlement by the Court on May 10, 2016—of costs for which Class Counsel seeks reimbursement; (2) consider that not only were the majority of costs during these periods allocated to PPG, but the costs sought to be reimbursed that were incurred during these periods were reasonable and appropriate, and (3) also consider that Class Counsel sought and seeks to recover less than $9,000 in costs from the Settlement Fund that were incurred after the Settlement Agreement was executed. These points are addressed in additional detail below.

31. First, between the agreement in principle on July 14, 2014 and the execution of the Settlement Agreement on November 7, 2014, costs incurred for which reimbursement was sought from the Settlement Fund were for activities that were related to the then-ongoing suit against Honeywell, and that benefited the Honeywell Classes. As can be seen in the documentation of costs in Exhibit 1 to the Declaration of Howard A. Janet submitted in support of this memorandum of law—materials that were previously submitted for *in camera* review on October 9, 2015 (ECF No. 431)—these costs comprised electronic document management of discovery in the case; depositions of witnesses, all of which were attended by counsel for Honeywell; travel costs for court conferences; three invoices for services of experts retained to perform air pollution modeling and risk assessment relative to all classes (two of which were for services performed in June and July 2014, respectively); and fees and for legal research and third-party document production. (*See* Janet Decl., Ex. 1 at 6–9.) Honeywell remained a defendant in the case, against which Plaintiffs continued to allege civil conspiracy. Of all costs incurred[7] during this period, $171,381.47 were allocated solely

[7] In Exhibit 1, Column B represents the date the cost was paid. The dates at the end of the text of the entries in Column D represents the date the cost was incurred, i.e., when the bill was received.

to the PPG Class and thus not sought to be recovered from the Settlement Fund, while $83,445.72 were and are sought to be recovered from the Settlement Fund. (*Id.* at 2, 5)

32. From the execution of the settlement agreement on November 7, 2014 until Class Counsel moved for an award of costs and fees on June 1, 2015, only $8,874.85 were and are sought to be recovered from the Settlement Fund. (*See* Janet Decl., Ex. 1 at 6.) This figure comprised costs for document management ($875.00); PACER research fees ($64.10); a transcript of a status conference with the Court on April 29, 2015 ($431.65); and expenses for long-distance telephone calls ($561.03), postage ($479.69), copies ($3,086.50), and shipping ($2,651.88) incurred throughout the litigation. (*Id.*) No costs incurred after November 7, 2014 were allocated solely to the Honeywell Classes. Honeywell remained a defendant in the case during this period.

33. By contrast, $66,042.50 in expenses incurred between the date of the settlement agreement and the date of the fee petition were allocated to the PPG Class. These costs were primarily for expert witness fees. (*See id.*) Like all other costs allocated solely to the PPG Class, they were not included in Class Counsel's fee petition.

34. In total, Class Counsel allocated $245,237.36 to the PPG Class, which primarily comprised fees to experts in connection with developing opinions regarding the contribution of PPG's activities to contamination of the PPG Class properties. These costs were not included in the fee petition. Class Counsel allocated $54,154.19 solely to the Honeywell Classes, which primarily comprised costs related to mediation and depositions of representatives of the Honeywell Classes corporate designees. Class Counsel allocated $1,085,869.58 to all three classes jointly, for services that benefited all three classes. Again, only $8,874.85 in costs incurred after the settlement agreement was concluded on November 7, 2014 were included in Class Counsel's expense reimbursement petition.

These latter dates are the relevant dates for the representations made regarding the costs incurred by Class Counsel.

IV. CLASS COUNSEL ARE ENTITLED TO AN AWARD OF REASONABLE COSTS.

Federal Rule of Civil Procedure Rule 23(h) authorizes recovery of "nontaxable costs that are authorized by law or by the parties' agreement." In this District, "[c]ounsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action." *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001). These expenses include "reasonable expenses normally charged to a fee paying client." William B. Rubenstein, *Newberg on Class Actions* § 16:5 (5th ed. 2015). The standard for what constitutes a reasonable expense " 'is to be given a liberal interpretation.' " *Id.* at § 16:10 (quoting *Dowdell v. City of Apopka, Florida*, 698 F.2d 1181, 1192 (11th Cir. 1983)).

Courts have approved the award of expenses such as expert witness fees, travel costs, court costs, court reporter and transcript costs, costs for photocopying, telephone and facsimile, postage and shipping, mediation expenses, document management fees, and computer-assisted legal research. *See id.* at § 16:5; *see also Abrams* v. *Lightolier Inc.,* 50 F.3d 1204, 1225 (3d Cir. 1995); *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 158 (D.N.J. 2002); *Varacallo* v. *Massachusetts Mut. Life Ins. Co.,* 226 F.R.D. 207, 256–57 (D.N.J. 2005).

Here, Class Counsel's claimed costs are documented in detail and are of the type normally charged to a fee-paying client. First, although this is not at issue on remand, the type and documentation of expenses claimed by Class Counsel are legally sufficient to warrant reimbursement. The detailed, itemized accounting of expenditures previously submitted to the Court and submitted under seal in connection with this motion, which are supported by a declaration from Class Co-Counsel Steven J. German (*see* ECF No. 436 at 8–11) comprise expenses that are of the types customarily approved by other courts. Neither the reasonableness of the amounts of individual

expenses, nor the eligibility of the types of listed expenses for reimbursement, has been challenged by Objector or called into doubt by the Court or the Third Circuit.

Second, Class Counsel reasonably and appropriately allocated case costs between the classes based on developments in the underlying litigation. From the filing of the initial Complaint to the filing of the Fourth Amended Complaint, Plaintiffs pursued litigation against both Defendants for contamination of numerous COPR sites where the contributions of each Defendant to the contamination of the sites could not be apportioned, and where civil conspiracy was alleged against both Defendants. As detailed above, these allegations were supported by substantial evidence.

Moreover, no evidence was available at the commencement of litigation to distinguish the contributions of each Defendant to COPR contamination of the properties of concern. Plaintiffs did not obtain the full scope of discovery until mid-2013 that allowed them to propose three classes. The classes proposed were proximate to the historic areas of production of chrome by each Defendant and their primary COPR disposal sites, and reflected the areas of greatest community concern regarding COPR contamination.

These refinements to the class definition allowed Plaintiffs to prosecute claims on behalf of cohesive classes, capable of certification, against the Defendants. Plaintiffs continued to allege that Defendants were jointly and severally liable for the contamination of all properties on the basis of civil conspiracy, until that claim was voluntarily dismissed from the operative complaint. Notwithstanding this, however, Plaintiffs allocated over $240,000 in expenses to the putative PPG Class (Class B) for activities that benefited the development of claims against that putative class. As discussed, these costs comprised the majority of those incurred after a settlement in principle was reached with Honeywell.

However, it was nonetheless appropriate to allocate to the Honeywell Classes costs for services that were incurred after an agreement in principle was reached on July 14, 2014 and that

reasonably benefited those classes. The viability of claims and possibility of continued litigation against Honeywell persisted until the Court's final approval of the Settlement Agreement. The costs allocated to the Honeywell Classes that were incurred after a settlement in principle was reached, moreover, were either for activities that primarily benefited those classes, such as mediation expenses, or activities that reasonably benefited all classes (e.g., document management). Class Counsel seek reimbursement of less than $9,000 of costs incurred after the Settlement Agreement was executed.

In sum, it is equitable for the Honeywell Classes to bear the costs sought in this Motion, as they were advanced for activities that benefited those classes. *See, e.g.*, *Newberg on Class Actions* § 16:5 (noting that deducting costs from a common fund "is based on notions of unjust enrichment that were developed by 19th century equity courts—namely, that the class would be unjustly enriched if it received the bounty of [a] lawyer's services without compensating the lawyer for those services.").

As previously indicated in Class Counsel's fee petition, however, Class Counsel will perform a second distribution to the Honeywell Classes, in accordance with an equitable, Court-approved formula, if the PPG Class obtains a recovery of damages:

> We reserve our right to seek reimbursement for such expenses should the Class B case against PPG resolve to the benefit of the plaintiffs. At such time, based on an allocation formula approved by the Court, Class Counsel may perform a second distribution of expenses to the Class A and C plaintiffs based on a recovery from PPG. This approach to the reimbursement of costs is equitable in that Class Counsel are reimbursed for their reasonable and necessary costs to achieve this settlement with Honeywell while the Classes are only assessed their fair share of expenses.

(*See* ECF No. 397-1 at 25.) The Third Circuit concluded that "class counsel made no formal commitment to repay the Honeywell classes proportionally for expenses should the PPG litigation prove successful." (ECF No. 451-1 at 41.) Class Counsel thus formally commits here that, if the PPG Class obtains a recovery of damages, Class Counsel will propose a formula to the Court to

allocate equitably between the Honeywell and PPG Classes the costs incurred for the benefit of both classes in prosecuting this litigation. If approved by the Court, the Honeywell Classes will then receive a second distribution, paid from the funds recovered on behalf of the PPG Class, in an amount that reflects the costs advanced for the benefit of all classes that will be equitably charged to the PPG Class.

Class Counsel also note that this Motion and supporting papers will be promptly posted to the settlement website at http://honeywelljerseycitysettlement.com/courtdocs. However, Class Counsel do not believe the Court needs to provide for individualized notice or a lengthy period for objections to this Motion. Federal Rule of Civil Procedure 23(h) provides that notice of motions by Class Counsel regarding fees must be provided in a "reasonable manner," which need not require individualized notice. *See Newberg on Class Actions* § 8:23. Courts have held that a period of approximately 14 days is acceptable notice between the time of a motion for attorney's fees and a fairness hearing. *Id.* at § 8:24.

Moreover, Class Counsel previously provided individualized notice (i.e., postcard notice) of the settlement website. (*See* ECF No. 439 at 35.) Class Counsel posted on that website their previous petition for fees and costs and a letter to the Court which slightly reduced the amount of costs sought. (*Id.* at 42–43; *see also* http://honeywelljerseycitysettlement.com/courtdocs). The costs sought here are the same as those petitioned for previously (as modified by letter in ECF No. 431). As the Court observed when it found that Class Counsel need not submit additional notice to members of the Honeywell Classes of minor modifications to their motion for fees and expenses, the Court's role as a fiduciary for the classes militates in favor of avoiding additional administrative expenses associated with unnecessary, additional individualized notice. (ECF No. 439 at 44.) That same logic should apply here with greater force, since the amount of costs sought has not changed, and Objector Chandra was the only class member to object to Class Counsel's requested fees and costs.

Court approval of these expenses at this juncture is not only appropriate in light of the factual record, but also serves the interests of the Honeywell Classes. Foregoing a lengthy fact-finding process by a Special Master will avoid further delay in distributing the settlement funds and will also avoid additional expenses charged to the Honeywell Classes, such as master's fees.

V. CONCLUSION

The factual record, applicable law, and fairness to all members of the Honeywell Classes and of the putative PPG Class provide adequate reasoning to support this Court's award of the requested reasonable expenses to Class Counsel. This course of action will protect members of the Honeywell Classes from additional charges and further delay in settlement distribution. Moreover, after having reviewed this Motion, Objector has stipulated that she will not pursue her prior objections nor file a further objection if the Court grants this Motion. Based on the facts and analysis set forth above, and the entire record in this case, the Court may now conclude this matter and make factual findings, in a manner suggested by the enclosed proposed order, which will satisfy the mandate of the United States Court of Appeals for the Third Circuit.

Class Counsel thus respectfully move that the Court grant their request for reasonable costs to Class Counsel in the amount of $1,140,023.77. Because granting this Motion will resolve the sole issue before the Court on remand from the Third Circuit, which is also the only outstanding issue regarding the settlement between Plaintiffs and Honeywell, Plaintiffs also move that the Court approve the distribution of all monies from the settlement fund as set forth in the Order and Final Judgment Approving Class-Action Settlement, dated May 10, 2016. (ECF No. 442.)

Respectfully submitted,

Dated: September 15, 2017 By: s/ Allan Kanner

KANNER AND WHITELEY, LLC
Allan Kanner, Esq.
Elizabeth B. Petersen, Esq. *(pro hac vice)*

701 Camp Street
New Orleans, LA 70130
Telephone: (504) 524-5777
Facsimile: (504) 524-5763
A.Kanner@kanner-law.com
E.Petersen@kanner-law.com

JANET, JENNER & SUGGS, LLC
Howard A. Janet, Esq. (*pro hac vice*)
1777 Reisterstown Road, Suite 165
Commerce Centre East
Baltimore, MD 21208
Telephone: (410) 653-3200
Facsimile: (410) 653-9030
hjanet@jjsjustice.com

GERMAN RUBENSTEIN LLP
Steven J. German, Esq.
Joel M. Rubenstein, Esq.
19 West 44th Street, Suite 1500
New York, NY 10036
Telephone: (212) 704-2020
Facsimile: (212) 704-2077
sgerman@germanrubenstein.com
jrubenstein@germanrubenstein.com

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MATTIE HALLEY, ET AL.

On Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

HONEYWELL INTERNATIONAL, INC., ET AL.

Defendants.

Civil Action No. 2:10-cv-3345 (ES) (JAD)

[PROPOSED] ORDER ON CLASS COUNSEL'S MOTION SEEKING AN AWARD OF REASONABLE COSTS

Document Electronically Filed

Salas, District Judge.

WHEREAS, pending before the Court is Class Counsel's Motion Seeking an Award of Reasonable Costs ("Class Counsel's Motion") (ECF No. 455);

WHEREAS, Class Counsel represent Mattie Halley, Leticia Malave, Shem Onditi, and the Temporary Administrator of the Estate of Sergio de la Cruz, on behalf of themselves and all others similarly situated (collectively, "Plaintiffs");

WHEREAS, on July 21, 2017, the United States Court of Appeals for the Third Circuit affirmed the judgment of this Court, dated May 10, 2017, insofar as that judgment approved the settlement of the claims of Classes A and C in this matter (the "Honeywell Classes") as fair and adequate, and approved the award of attorney's fees;

WHEREAS, the Third Circuit remanded this action for the limited purpose that this Court articulate why the costs were reasonably incurred in the prosecution of the case against Defendant Honeywell International, Inc. ("Honeywell") and address the issue of commingled expenses;

WHEREAS, in remanding the action, the Third Circuit expressly offered no opinion as to the amount of the expenses claimed by Class Counsel that this Court should approve;

WHEREAS, on July 31, 2017, this Court entered an Order that contemplated appointing a Master, the Honorable Garrett E. Brown, Jr., to assist the Court in accomplishing the tasks presented by the remand from the Third Circuit;

WHEREAS, on August 13, 2017, Plaintiffs and Maureen Chandra ("Objector"), the sole Objector to object to this Court's award of fees and expenses to Class Counsel, filed, in response to this Court's July 31 Order, a Joint Motion to Amend Order Regarding Appointment of Special Master, which informed this Court that they expected to submit filings within 30 days that "may obviate the need to appoint a special master and avoid burdening members of the Honeywell classes with additional expenses and delays in distributing their Court-awarded compensation." (ECF No. 453 at 2);

WHEREAS, this Court granted that motion, extending the time to object to the appointment of a Master until September 13, 2017;

WHEREAS, on September 13, 2017, Class Counsel filed their Motion Seeking an Award of Reasonable Costs (hereinafter "Class Counsel's Motion"),

WHEREAS, through Class Counsel's Motion, Class Counsel now seek the Court's approval for reimbursement of the same costs they sought to be reimbursed previously (ECF No. 367), in the amount of $1,140,023.77;

WHEREAS, Objector—the only objector to contest Class Counsel's claimed fees—has stipulated that she will not pursue her previously filed objections and will not object if the Court grants Class Counsel's Motion;

WHEREAS, Defendant Honeywell International, Inc. ("Honeywell") has stated that it takes no position regarding the issue of Class Counsel's costs;

THEREFORE, this Court hereby makes the following findings of fact and conclusions of law:

1. Based on studies published in 2008 by the federal Agency for Toxic Substances Disease Registry, the New Jersey Department of Environmental Protection ("NJDEP"), and investigators at the Robert Wood Johnson Medical School and Environmental and Occupational Health Sciences Institute, Plaintiffs filed this action on May 17, 2010 against Defendants Honeywell International, Inc. and PPG Industries, Inc. The action was filed on behalf of a medical monitoring class (defined as "all persons who, on or before May 17, 2010, for six consecutive months or greater, ever resided, worked and/or attended school on any parcel of land any part of which is located within 500 feet of any COPR [chromium ore processing residue] site located in Jersey City, New Jersey") and a property damages class (defined as "[a]ll persons who, on or after May 17, 2010, own any parcel of land any part of which is located within one quarter mile from any COPR site located in Jersey City, New Jersey," excluding the Hudson Waterfront Neighborhood). (*See* ECF No. 1-1 at 15.) As Plaintiffs alleged, both PPG and Honeywell were liable for injury to both the medical monitoring class and property damages class. (These classes were putative in nature.)

2. The original Complaint asserted that Honeywell and PPG were jointly and severally liable for both diminution in property values and for medical monitoring compensation, because their chromium production and COPR waste disposal activities exposed the members of both the medical monitoring class and the property damages class to hexavalent chromium, and because the aforementioned studies and other information available to Plaintiffs did not provide a basis for attributing COPR contamination of particular properties to the acts or omissions of a particular defendant.

3. The original Complaint included counts for private nuisance, strict liability, trespass, battery, and negligence. Along with all subsequent amendments to the Complaint, it also included a

count for civil conspiracy, in which Plaintiffs alleged that Honeywell, PPG, and their predecessors in interest had carried on a conspiracy to improperly dispose of COPR, to conceal from the public and government regulators the risks their disposal activities posed to the health of Jersey City residents, to minimize the negative health impacts associated with chromium exposure to the NJDEP and the public, and to modify cleanup standards for Defendants' benefit.

4. Plaintiffs alleged that this conspiracy prevented the members of all classes from learning about the dangerous contamination of their properties, which prolonged the exposure to COPR of members of both the medical monitoring and the property damages classes, and delayed remediation and compensation for COPR contamination.

5. With Defendants' consent, Plaintiffs amended their Complaint for the first time by filing a document entitled "Amended Class Action Complaint and Jury Demand" on June 20, 2012, on behalf of a single, putative property damages class (defined as "[a]ll persons who, as of May 17, 2010 . . . owned any real property, any part of which is located within one-quarter mile of any COPR Site in Jersey City," excluding industrial and Hudson Waterfront properties). (ECF No. 124 at 12.) The Amended Complaint continued to allege that Defendants were jointly and severally liable for all counts in the Amended Complaint, including civil conspiracy.

6. On October 26, 2012, Plaintiffs, unable to obtain stipulations or complete, narrative answers to interrogatories that specifically identified sites where COPR waste Defendants had produced was known or suspected to exist, filed a motion to compel disclosure of that information.

7. Between June 2012, when the Amended Complaint was filed, and June 2013, when Plaintiffs moved to file an amendment to the Amended Complaint (a pleading entitled "Fourth Amended Complaint"), Defendants provided Plaintiffs with approximately 2.5 million additional pages of discovery, and the non-party Site Administrator provided the Plaintiffs with approximately 138,000 pages of discovery.

8. After the Plaintiffs reviewed the aforementioned discovery responses with the input of their experts, they moved on June 26, 2013 to file a Fourth Amended Complaint, in order to narrow the scope of the lawsuit to those properties that those discovery responses indicated were the subject of greatest community concern and where the contribution of each Defendant to the COPR contamination of those properties could be ascertained. (No pleading entitled "Second Amended Complaint" or "Third Amended Complaint" was ever operative in this case.)

9. The Honorable John A. Dickson, United States Magistrate Judge, by order issued January 27, 2014, permitted a Fourth Amended Complaint to be filed. Magistrate Dickson found that the materials produced during discovery from Defendants and the non-party Site Administrator had provided Plaintiffs with new materials that justified the amendment of the operative complaint.

10. The Fourth Amended Complaint was filed on January 28, 2014. It identified three geographically distinct classes of properties allegedly contaminated by Honeywell's and PPG's tortious actions: Classes A and C, which sought property damages from Honeywell (the "Honeywell Classes"), and Class B, which sought property damages from PPG (the "PPG Class"). (Classes A and C were putative classes until certified by the Court. Class B remains a putative class.) It narrowed the scope of the lawsuit from 77 to 26 COPR sites, and continued to allege civil conspiracy claims against both Defendants.

11. On July 14, 2014, Plaintiffs and Honeywell agreed to settle in principle the claims of Classes A and C, subject to Court approval and to the execution of a settlement agreement mutually satisfactory to counsel. However, Honeywell continued to be a defendant in the case and appeared at all subsequent depositions of witnesses. The term sheet did not affect the viability of Plaintiffs' claims against Honeywell, including the civil conspiracy claim.

12. On November 7, 2014, Plaintiffs and Honeywell executed the Class Action Settlement Agreement (the "Settlement Agreement"), and moved for preliminary approval of that

agreement. Among other terms, the Settlement Agreement provided that Defendants would pay $10,017,000.00 to compensate the members of the Honeywell Classes (the "Settlement Fund"). It also required that the Court approve the Settlement Agreement before the Honeywell Classes' claims against Honeywell could be dismissed and the Settlement Fund could be distributed.

13. On March 17, 2015, with Defendants' consent, Plaintiffs filed a Fifth Amended Complaint, to conform the definitions of Classes A and C to the corresponding class definitions in the Settlement Agreement. The Fifth Amended Complaint continued to allege a civil conspiracy claim against both Defendants.

14. On May 4, 2015, with Defendants' consent, Plaintiffs filed a Sixth Amended Complaint, which retained the claim of conspiracy against both Defendants, but removed allegations of joint and several liability as to the other counts.

15. On June 1, 2015, Class Counsel filed a Motion Seeking an Award of Reasonable Costs, Attorneys' Fees and Incentive Awards. On September 3, 2015, Plaintiffs and Honeywell filed a Joint Motion for Final Approval of Class-Action Settlement.

16. On September 24, 2015, the Court conducted a fairness hearing regarding the proposed Settlement Agreement. Following the hearing, the Court considered supplementary materials submitted by Class Counsel (including *in camera* submissions documenting case costs, which the Court has reviewed again in connection with Class Counsel's Motion), and issued a final judgment on May 10, 2016 that approved the Settlement Agreement.

17. As set forth below, based on the course of litigation in this case, and the entire factual record, the Court finds that the expenses for which Class Counsel seek reimbursement were adequately documented, reasonably and appropriately incurred in the prosecution of the class action against Honeywell, and should be awarded from the Settlement Fund. In making this finding, the Court focuses its analysis on costs incurred during three periods of time: from the commencement

of the lawsuit on May 17, 2010 until an agreement in principle was reached with Honeywell on July 14, 2014; from July 14, 2014 until the Class Action Settlement Agreement was executed on November 7, 2014; and from November 7, 2014 until final judgment approving the Settlement Agreement was entered on May 10, 2015.

18. From the commencement of this lawsuit on May 17, 2010 until the filing of the Fourth Amended Complaint on January 27, 2014, Plaintiffs reasonably alleged that Defendants were jointly and severally liable for the contamination of all class properties on all other counts of their complaints. With the benefit of additional discovery that was not fully produced by PPG and the Site Administrator until June 2013, Plaintiffs were able to propose geographically distinct classes that defined areas of contamination for which each Defendant was liable to the classes. Up until that point, Plaintiffs lacked the information necessary to distinguish between the relative contributions of each Defendant to the damages suffered by Plaintiffs. Plaintiffs also had evidence to support a claim for civil conspiracy against Honeywell and PPG, which remained viable from the filing of the lawsuit on May 17, 2010 until final judgment approving the Settlement Agreement was entered on May 10, 2017. The Court finds it was reasonable for Class Counsel, on behalf of Plaintiffs, to prosecute the action against Honeywell and PPG on the basis of joint and several liability as to all counts from the filing of the Complaint to the filing of the Fourth Amended Complaint, and as to the count of civil conspiracy throughout the entire duration of the litigation against Honeywell. The Court thus finds that the costs for which Class Counsel seek to be reimbursed and that were incurred from the filing of the initial Complaint on May 17, 2010 until the settlement in principle was reached on July 14, 2014, as well as those incurred to investigate and prepare Plaintiffs' claims before filing the initial Complaint, are fair and reasonable and were advanced for services that benefited the Honeywell Classes.

19. For costs incurred between the agreement in principle reached on July 14, 2014 and the execution of the final Settlement Agreement on November 7, 2014, Class Counsel seek reimbursement of $83,445.72 from the Settlement Fund for the following items: electronic document management of discovery in the case; depositions of witnesses (all of which were attended by counsel for Honeywell); travel costs for court conferences; three invoices for services of experts retained to perform air pollution modeling and risk assessment relative to all classes; and fees for legal research and third-party document production. Because Honeywell continued to actively participate in the litigation, and the allegations against Honeywell continued to include a claim for civil conspiracy, for which Honeywell was jointly and severally liable, the Court finds that costs incurred during this period for which Class Counsel seek reimbursement are fair and reasonable and were advanced for services that benefited the Honeywell Classes. Moreover, Class Counsel appropriately allocated $171,381.47 of costs incurred during this period to the putative PPG Class, and did not seek to recover those costs from the Honeywell Classes.

20. Class Counsel also seek $8,874.85 in costs incurred from November 7, 2014, when the Settlement Agreement was signed, until Class Counsel moved for an award of costs and fees on June 1, 2015. These costs comprise those for electronic document management; PACER research; a transcript of a status conference with the Court on April 29, 2015; and long-distance telephone calls, postage, copies, and shipping incurred throughout the litigation. $66,042.50 in costs incurred during this period were allocated to the putative PPG Class (Class B) for services that benefited that Class. Plaintiffs' claims against Honeywell were still pending during this period, including the civil conspiracy claim. The Court thus finds that the costs incurred during this period for which Class Counsel seek reimbursement were fair and reasonable and benefited the Honeywell Classes.

21. Based upon both the foregoing findings of fact and due consideration of all of the files, records, and proceedings in the action, due consideration of the mandate of the Third Circuit,

and due consideration of the interests of all members of Classes A, B, and C, and being fully advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. Class Counsel's Motion Seeking an Award of Reasonable Costs is GRANTED.

2. Class Counsel's expenses in the amount of $1,140,023.77 are adequately documented and were reasonably and appropriately incurred and charged to the Honeywell Classes in the prosecution of this action against Honeywell, and thus are approved.

3. Distributions from the Settlement Fund shall be made as provided in the Order and Final Judgment Approving Class Action Settlement (ECF No. 441).

4. The Court hereby reserves its exclusive, general, and continuing jurisdiction over the parties to the Settlement Agreement as needed or appropriate in order to administer, supervise, implement, interpret, or enforce the Settlement Agreement in accordance with its terms, including the investment, conservation, and protection of settlement funds prior to distribution, and the distribution of settlement funds.

IT IS SO ORDERED.

Dated: _____

_____

Hon. Esther Salas
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MATTIE HALLEY, ET AL.

On Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

HONEYWELL INTERNATIONAL, INC., ET AL.

Defendants.

Civil Action No. 2:10-cv-3345 (ES) (JAD)

CERTIFICATE OF SERVICE

Document Electronically Filed

I, Allan Kanner, hereby certify that on September 15, 2017, Class Counsel's Motion Seeking an Award of Reasonable Costs, dated September 15, 2017; the Memorandum of Law in Support of Class Counsel's Motion Seeking an Award of Reasonable Costs, dated September 15, 2017; a Proposed Order submitted in connection with that Motion; and this Certificate of Service were electronically filed with the Clerk of this Court using the CM/ECF system. I also certify that the foregoing documents were served on all counsel of record, who are filing users, via Notices of Electronic Filing automatically generated by the Court's electronic filing system.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Respectfully submitted,

Dated: September 15, 2017 By: s/ Allan Kanner

KANNER AND WHITELEY, LLC
Allan Kanner, Esq.
Elizabeth B. Petersen, Esq. *(pro hac vice)*

701 Camp Street
New Orleans, LA 70130
Telephone: (504) 524-5777
Facsimile: (504) 524-5763
A.Kanner@kanner-law.com
E.Peterson@kanner-law.com

JANET, JENNER & SUGGS, LLC
Howard A. Janet, Esq. (*pro hac vice*)
1777 Reisterstown Road, Suite 165
Commerce Centre East
Baltimore, MD 21208
Telephone: (410) 653-3200
Facsimile: (410) 653-9030
hjanet@jjsjustice.com

GERMAN RUBENSTEIN LLP
Steven J. German, Esq.
Joel M. Rubenstein, Esq.
19 West 44th Street, Suite 1500
New York, NY 10036
Telephone: (212) 704-2020
Facsimile: (212) 704-2077
sgerman@germanrubenstein.com
jrubenstein@germanrubenstein.com

Counsel for Plaintiffs